

104TH CONGRESS
1ST SESSION

S. 1420

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, NOVEMBER 16), 1995

Mr. STEVENS (for himself, Mr. BREAUX, Mr. CHAFEE, Mr. JOHNSTON, and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “International Dolphin Conservation Program Act”.

6 (b) REFERENCES TO MARINE MAMMAL PROTECTION
7 ACT.—Except as otherwise expressly provided, whenever
8 in this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-
2 sion, the reference shall be considered to be made to a
3 section or other provision of the Marine Mammal Protec-
4 tion Act of 1972 (16 U.S.C. 1361 et seq.).

5 **SEC. 2. PURPOSE AND FINDINGS.**

6 (a) PURPOSE.—The purpose of this Act is to give ef-
7 fect to the Declaration of Panama, signed October 4,
8 1995, by the Governments of Belize, Colombia, Costa
9 Rica, Ecuador, France, Honduras, Mexico, Panama,
10 Spain the United States of America, Vanuatu, and Ven-
11 ezuela, including the establishment of the International
12 Dolphin Conservation Program, relating to the protection
13 of dolphins and other species, and the conservation and
14 management of tuna in the eastern tropical Pacific Ocean.

15 (b) FINDINGS.—The Congress finds that twelve na-
16 tions, including the United States, agreed in the Declara-
17 tion of Panama to, among other things—

18 (1) require that the total annual dolphin mor-
19 tality in the purse seine fishery for yellowfin tuna in
20 the eastern tropical Pacific Ocean not exceed 5,000,
21 with the commitment and objective of progressively
22 reduce dolphin mortality to levels approaching zero
23 through the setting of annual limits;

1 (2) establish a per-stock per-year mortality
2 limit up to the year 2001 of between 0.2 percent and
3 0.1 percent of the minimum population estimate;

4 (3) starting with the year 2001, require that
5 the per-stock per-year mortality of dolphin not ex-
6 ceed 0.1 percent of the minimum population esti-
7 mate;

8 (4) require that in the event that the mortality
9 limits in paragraph (1), (2), or (3) are exceeded, all
10 sets on dolphins in the case of paragraph (1), or sets
11 on such stock and any mixed schools containing
12 members of such stock in the case of paragraph (2)
13 or (3), shall cease for that fishing year; in the case
14 of paragraph (2), to conduct a scientific review and
15 assessment in 1998 of progress toward the year
16 2000 objective and consider recommendations as ap-
17 propriate; and, in the case of paragraph (3), to con-
18 duct a scientific review and assessment regarding
19 that stock or those stocks and consider further rec-
20 ommendations;

21 (5) establish a per-vessel maximum annual dol-
22 phin mortality limit consistent with the established
23 per-year mortality caps; and

1 (6) provide a system of incentives to vessel cap-
 2 tains to continue to reduce dolphin mortality, with
 3 the goal of eliminating dolphin mortality.

4 **SEC. 3. DEFINITIONS.**

5 Section 3 (16 U.S.C. 1362) is amended by adding
 6 at the end the following new paragraphs:

7 “(28) The term ‘International Dolphin Conservation
 8 Program’ means the international program established by
 9 the agreement signed in La Jolla, California, in June
 10 1992, as formalized, modified, and enhanced in accord-
 11 ance with the Declaration of Panama.

12 “(29) The term ‘Declaration of Panama’ means the
 13 declaration signed in Panama City, Republic of Panama,
 14 on October 4, 1995.”.

15 **SEC. 4. AMENDMENTS TO TITLE I.**

16 (a) Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is
 17 amended—

18 (1) by inserting in the first sentence “, and au-
 19 thorizations may be granted under title III with re-
 20 spect to the yellowfin tuna fishery of the eastern
 21 tropical Pacific Ocean, subject to regulations pre-
 22 scribed under that title by the Secretary without re-
 23 gard to section 103” before the period; and

24 (2) by striking the semicolon in the second sen-
 25 tence and all that follows through “practicable”.

1 (b) Section 101(a)(2)(B) (16 U.S.C. 1371(a)(2)(B))
2 is amended to read as follows:

3 “(B) In the case of yellowfin tuna har-
4 vested with purse seine nets in the eastern trop-
5 ical Pacific Ocean, and products therefrom, to
6 be exported to the United States, shall require
7 that the government of the exporting nation
8 provide documentary evidence that—

9 “(i) the tuna or products therefrom
10 were not banned from importation under
11 section 101(a)(2) before the effective date
12 of this section; or

13 “(ii) the tuna or products therefrom
14 were harvested after the effective date of
15 this section by vessels of a nation which
16 participates in the International Dolphin
17 Conservation Program, and such harvest-
18 ing nation is either a member of the Inter-
19 American Tropical Tuna Commission or
20 has initiated steps, in accordance with arti-
21 cle V, paragraph 3 of the Convention es-
22 tablishing the Inter-American Tropical
23 Tuna Commission, to become a member of
24 that organization,

1 except that the Secretary shall not accept such
2 documentary evidence as satisfactory proof for
3 purposes of this paragraph if—

4 “(I) the government of the har-
5 vesting nation does not authorize the
6 Inter-American Tropical Tuna Com-
7 mission to release sufficient informa-
8 tion to the Secretary to allow a deter-
9 mination of compliance with the Inter-
10 national Dolphin Conservation Pro-
11 gram; or

12 “(II) after taking into consider-
13 ation this information, findings of the
14 Inter-American Tropical Tuna Com-
15 mission, and any other relevant infor-
16 mation, including but not limited to
17 information that a nation is consist-
18 ently failing to take enforcement ac-
19 tions on violations which diminish the
20 effectiveness of the International Dol-
21 phin Conservation Program, the Sec-
22 retary, in consultation with the Sec-
23 retary of State, finds that the harvest-
24 ing nation is not in compliance with

1 the International Dolphin Conserva-
2 tion Program.”.

3 (c) Section 101 (16 U.S.C. 1371) is amended by add-
4 ing at the end the following new subsection:

5 “(d) The provisions of this Act shall not apply to a
6 citizen of the United States when such citizen incidentally
7 takes any marine mammal during fishing operations out-
8 side the United States exclusive economic zone when em-
9 ployed on a foreign fishing vessel of a harvesting nation
10 which is in compliance with the International Dolphin
11 Conservation Program.”.

12 (d) Section 104(h) is amended to read as follows:

13 “(h)(1) Consistent with the regulations prescribed
14 pursuant to section 103 of this title and to the require-
15 ments of section 101 of this title, the Secretary may issue
16 an annual permit to a United States vessel for the taking
17 of such marine mammals, together with regulations to
18 cover the use of any such annual permits.

19 “(2) Such annual permits for the incidental taking
20 of marine mammals in the course of commercial purse
21 seine fishing for yellowfin tuna in the eastern tropical Pa-
22 cific Ocean shall be governed by section 304, subject to
23 the regulations issued pursuant to section 302.”.

24 (e) Section 110 (16 U.S.C. 1380) is amended—

1 (1) by redesignating subsection (a)(1) as sub-
2 section (a); and

3 (2) by striking subsection (a)(2).

4 (f) Subsection (d)(1) of the Dolphin Protection
5 Consumer Information Act (16 U.S.C. 1385(d)(1)) is
6 amended to read as follows:

7 “(1) It is a violation of section 5 of the Federal
8 Trade Commission Act for any producer, importer,
9 exporter, distributor, or seller of any tuna product
10 that is exported from or offered for sale in the
11 United States to include on the label of that product
12 the term ‘Dolphin Safe’ or any other term or symbol
13 that falsely claims or suggests that the tuna con-
14 tained in the product was harvested using a method
15 of fishing that is not harmful to dolphins if the
16 product contains—

17 “(A) tuna harvested on the high seas by a
18 vessel engaged in driftnet fishing;

19 “(B) tuna harvested in the eastern tropical
20 Pacific Ocean by a vessel using purse seine nets
21 which do not meet the requirements of being
22 considered dolphin safe under paragraph (2); or

23 “(C) tuna harvested outside the eastern
24 tropical Pacific Ocean by a vessel using purse
25 seine nets which do not meet the requirements

1 for being considered dolphin safe under para-
2 graph (3).”.

3 (g) Subsection (d)(2) of the Dolphin Protection
4 Consumer Information Act (16 U.S.C. 1385(d)(2)) is
5 amended to read as follows:

6 “(2) For purposes of paragraph (1)(B), a tuna
7 product that contains tuna harvested in the eastern
8 tropical Pacific Ocean by a vessel using purse seine
9 nets is dolphin safe if—

10 “(A) the vessel is of a type and size that
11 the Secretary has determined, consistent with
12 the International Dolphin Conservation Pro-
13 gram, is not capable of deploying its purse seine
14 nets on or to encircle dolphins; or

15 “(B)(i) the product is accompanied by a
16 written statement executed by the captain of
17 the vessel which harvested the tuna certifying
18 that no dolphins were killed during the sets in
19 which the tuna were caught; and

20 “(ii) the product is accompanied by a writ-
21 ten statement executed by—

22 “(I) the Secretary or the Secretary’s
23 designee;

24 “(II) a representative of the Inter-
25 American Tropical Tuna Commission; or

1 “(III) an authorized representative of
 2 a participating nation whose national pro-
 3 gram meets the requirements of the Inter-
 4 national Dolphin Conservation Program,
 5 which states that there was an observer ap-
 6 proved by the International Dolphin Conserva-
 7 tion Program on board the vessel during the en-
 8 tire trip and documents that no dolphins were
 9 killed during the sets in which the tuna in the
 10 tuna product were caught; and

11 “(iii) the statements referred to in clauses
 12 (i) and (ii) are endorsed in writing by each ex-
 13 porter, importer, and processor of the product;
 14 and

15 “(C) the written statements and endorse-
 16 ments referred to in subparagraph (B) comply
 17 with regulations promulgated by the Secretary
 18 which would provide for the verification of tuna
 19 products as dolphin safe.”.

20 (h) Subsection (d) of the Dolphin Protection
 21 Consumer Information Act (16 U.S.C. 1385(d)) is amend-
 22 ed further by adding the following new paragraphs:

23 “(3) For purposes of paragraph (1)(C), tuna or
 24 a tuna product that contains tuna harvested outside

1 the eastern tropical Pacific Ocean by a fishing vessel
2 using purse seine nets is dolphin safe if—

3 “(A) it is accompanied by a written state-
4 ment executed by the captain of the vessel cer-
5 tifying that no purse seine net was intentionally
6 deployed on or to encircle dolphins during the
7 particular voyage on which the tuna was har-
8 vested; or

9 “(B) in any fishing in which the Secretary
10 has determined that a regular and significant
11 association occurs between marine mammals
12 and tuna, it is accompanied by a written state-
13 ment executed by the captain of the vessel and
14 an observer, certifying that no purse seine net
15 was intentionally deployed on or to encircle ma-
16 rine mammals during the particular voyage on
17 which the tuna was harvested.

18 “(4) No tuna product may be labeled with any
19 reference to dolphins, porpoises, or marine mam-
20 mals, except as dolphin safe in accordance with this
21 subsection.”.

22 (i) Subsection (f) of the Dolphin Protection
23 Consumer Information Act (16 U.S.C. 1385(f)) is amend-
24 ed to read as follows:

1 “(f) The Secretary, in consultation with the Secretary
 2 of the Treasury, shall issue regulations to implement this
 3 section not later than three months after the effective date
 4 of this section, including, but not limited to, regulations
 5 addressing the use of weight calculation and well location,
 6 and which require that tuna products are labeled in ac-
 7 cordance with subsection (d).”.

8 **SEC. 5. AMENDMENTS TO TITLE III.**

9 (a) The heading of title III is amended to read as
 10 follows:

11 **“TITLE III—INTERNATIONAL**
 12 **DOLPHIN CONSERVATION**
 13 **PROGRAM”.**

14 (b) Section 301 (16 U.S.C. 1411) is amended—

15 (1) in subsection (a), by striking paragraph (4)
 16 and inserting in lieu thereof:

17 “(4) Nations harvesting yellowfin tuna in the
 18 eastern tropical Pacific Ocean have demonstrated
 19 their willingness to participate in appropriate multi-
 20 lateral agreements to reduce, with the goal of elimi-
 21 nating, dolphin mortality in that fishery. Recognition
 22 of the International Dolphin Conservation Program
 23 will assure that the existing trend of reduced dolphin
 24 mortality continues; that individual stocks of dol-
 25 phins are adequately protected; and that the goal of

1 eliminating all dolphin mortality continues to be a
2 priority.”; and

3 (2) in subsection (b), by striking paragraphs
4 (2) and (3) and inserting in lieu thereof:

5 “(2) support the International Dolphin Con-
6 servation Program and efforts within the Program
7 to reduce, with the goal of eliminating, the mortality
8 referred to in paragraph (1);

9 “(3) ensure that the market of the United
10 States does not act as an incentive to the harvest of
11 tuna caught with driftnets or caught by purse seine
12 vessels in the eastern tropical Pacific Ocean not op-
13 erating in compliance with the International Dolphin
14 Conservation Program;”.

15 (c) Section 302 (16 U.S.C. 1412) is amended to read
16 as follows:

17 **“SEC. 302. AUTHORITY OF THE SECRETARY.**

18 “(a) REGULATIONS.—(1) The Secretary shall issue
19 regulations to implement the International Dolphin Con-
20 servation Program.

21 “(2)(A) Not later than three months after the effec-
22 tive date of this section, the Secretary shall issue regula-
23 tions to authorize and govern the incidental taking of ma-
24 rine mammal in the eastern tropical Pacific Ocean, includ-
25 ing any species of marine mammal designated as depleted

1 under this Act but not listed as endangered or threatened
2 under the Endangered Species Act (16 U.S.C. 1531 et
3 seq.), by vessels of the United States participating in the
4 International Dolphin Conservation Program.

5 “(B) Regulations issued under this section shall in-
6 clude provisions—

7 “(i) requiring observers on each vessel;

8 “(ii) requiring use of the backdown procedure
9 or other procedures equally or more effective in
10 avoiding mortality of marine mammals in fishing op-
11 erations;

12 “(iii) prohibiting intentional sets on stocks and
13 schools in accordance with the International Dolphin
14 Conservation Program;

15 “(iv) requiring the use of special equipment, in-
16 cluding, but not limited to, dolphin safety panels in
17 nets, operable rafts, speedboats with towing bridles,
18 floodlights in operable condition, and diving masks
19 and snorkels;

20 “(v) ensuring that the backdown procedure dur-
21 ing sets of purse seine net on marine mammals is
22 completed and rolling of the net to sack up has
23 begun no later than thirty minutes after sundown;

24 “(vi) banning the use of explosive devices in all
25 purse seine operations;

1 “(vii) establishing per vessel maximum annual
2 dolphin mortality limits, total dolphin mortality lim-
3 its and per-stock per-year mortality limits in accord-
4 ance with the International Dolphin Conservation
5 Program;

6 “(viii) preventing the making of intentional sets
7 on dolphins after reaching either the vessel maxi-
8 mum annual dolphin mortality limits, total dolphin
9 mortality limits, or per-stock per-year mortality lim-
10 its;

11 “(ix) preventing the fishing on dolphins by a
12 vessel without an assigned vessel dolphin mortality
13 limit;

14 “(x) allowing for the authorization and conduct
15 of experimental fishing operations, under such terms
16 and conditions as the Secretary may prescribe, for
17 the purpose of testing proposed improvements in
18 fishing techniques and equipment that may reduce
19 or eliminate dolphin mortality or do not require the
20 encirclement of dolphins in the course of commercial
21 yellowfin tuna fishing; and

22 “(xi) containing such other restrictions and re-
23 quirements as the Secretary determines are nec-
24 essary to implement the International Dolphin Con-

1 servation Program with respect to vessels of the
2 United States;
3 except that the Secretary may make such adjustments as
4 may be appropriate to provisions that pertain to fishing
5 gear and fishing practice requirements in order to carry
6 out the International Dolphin Conservation Program.

7 “(b) CONSULTATION.—In developing any regulation
8 under this section, the Secretary shall consult with the
9 Secretary of State, the Marine Mammal Commission and
10 the United States Commissioners to the Inter-American
11 Tropical Tuna Commission appointed under section 3 of
12 the Tuna Conventions Act of 1950 (16 U.S.C. 952).

13 “(c) EMERGENCY REGULATIONS.—(1) If the Sec-
14 retary determines, on the basis of the best scientific infor-
15 mation available (including that obtained under the Inter-
16 national Dolphin Conservation Program) that the inciden-
17 tal mortality and serious injury of marine mammals au-
18 thorized under this title is having, or is likely to have, a
19 significant adverse effect on a marine mammal stock or
20 species, the Secretary shall take actions as follows—

21 “(A) notify the Inter-American Tropical Tuna
22 Commission of his or her findings, along with rec-
23 ommendations to the Commission as to actions nec-
24 essary to reduce incidental mortality and serious in-
25 jury and mitigate such adverse impact; and

1 “(B) prescribe emergency regulations to reduce
2 incidental mortality and serious injury and mitigate
3 such adverse impact.

4 “(2) Prior to taking action under paragraph (1) (A)
5 or (B), the Secretary shall consult with the Secretary of
6 State, the Marine Mammal Commission, and the United
7 States Commissioners to the Inter-American Tropical
8 Tuna Commission.

9 “(3) Emergency regulations prescribed under this
10 subsection—

11 “(A) shall be published in the Federal Register,
12 together with an explanation thereof;

13 “(B) shall remain in effect for the duration of
14 the applicable fishing year; and

15 “(C) may be terminated by the Secretary at an
16 earlier date by publication in the Federal Register of
17 a notice of termination, if the Secretary determines
18 that the reasons for the emergency action no longer
19 exist.

20 “(4) If the Secretary finds that the incidental mortal-
21 ity and serious injury of marine mammals in the yellowfin
22 tuna fishery in the eastern tropical Pacific Ocean is con-
23 tinuing to have a significant adverse impact on a stock
24 or species, the Secretary may extend the emergency regu-
25 lations for such additional periods as may be necessary.

1 “(d) RESEARCH.—The Secretary shall, in coopera-
2 tion with the nations participating in the International
3 Dolphin Conservation Program and with the Inter-Amer-
4 ican Tropical Tuna Commission, undertake or support ap-
5 propriate scientific research to further the goals of the
6 International Dolphin Conservation Program, including,
7 but not limited to—

8 “(1) devising cost-effective fishing methods and
9 gear so as to reduce, with the goal of eliminating,
10 the incidental mortality and serious injury of marine
11 mammals in connection with commercial purse seine
12 fishing in the eastern tropical Pacific Ocean;

13 “(2) developing cost-effective methods of fishing
14 for mature yellowfin tuna without setting nets on
15 dolphins or other marine mammals;

16 “(3) carrying out a scientific research program
17 as described in section 117 for those marine mam-
18 mal species and stocks taken in the purse seine fish-
19 ery for yellowfin tuna in the eastern tropical Pacific
20 Ocean, including species or stocks not within waters
21 under the jurisdiction of the United States; and

22 “(4) studying the effect of chase and encircle-
23 ment on the health and biology of dolphin and dol-
24 phin populations incidentally taken in the course of

1 purse seine fishing for yellowfin tuna in the eastern
2 tropical Pacific Ocean.

3 The Secretary shall include a description of the annual
4 results of research carried out under this subsection in the
5 report required under section 303.”.

6 (d) Section 303 (16 U.S.C. 1413) is hereby repealed.

7 (e) Section 304 (16 U.S.C. 1414) is hereby redesignig-
8 nated as section 303, and amended to read as follows:

9 **“SEC. 303. REPORTS BY THE SECRETARY.**

10 “Notwithstanding section 103(f), the Secretary shall
11 submit annual reports to the Congress which include—

12 “(1) results of research conducted pursuant to
13 section 302;

14 “(2) a description of the status and trends of
15 stocks of tuna;

16 “(3) a description of the efforts to assess,
17 avoid, reduce, and minimize the bycatch of juvenile
18 yellowfin tuna and bycatch of nontarget species;

19 “(4) a description of the activities of the Inter-
20 national Dolphin Conservation Program and of the
21 efforts of the United States in support of the Pro-
22 gram’s goals and objectives, including the protection
23 of dolphin populations in the eastern tropical Pacific
24 Ocean, and an assessment of the effectiveness of the
25 Program;

1 “(5) actions taken by the Secretary under sec-
2 tion 101(a)(2)(B)(iii) (I) and (II);

3 “(6) copies of any relevant resolutions and deci-
4 sions of the Inter-American Tropical Tuna Commis-
5 sion, and any regulations promulgated by the Sec-
6 retary under this title; and

7 “(7) any other information deemed relevant by
8 the Secretary.”.

9 (f) Section 305 (16 U.S.C. 1415) is hereby repealed.

10 (g) Section 306 (16 U.S.C. 1416) is hereby redesign-
11 nated as section 304, and amended to read as follows:

12 **“SEC. 304. PERMITS.**

13 “(a) IN GENERAL.—(1) Consistent with the regula-
14 tions issued pursuant to section 302, the Secretary shall
15 issue a permit to a vessel of the United States authorizing
16 participation in the International Dolphin Conservation
17 Program and may require a permit for the person actually
18 in charge of and controlling the fishing operation of the
19 vessel. The Secretary shall prescribe such procedures as
20 are necessary to carry out this subsection, including, but
21 not limited to, requiring the submission of—

22 “(A) the name and official number or other
23 identification of each fishing vessel for which a per-
24 mit is sought, together with the name and address
25 of the owner thereof; and

1 “(B) the tonnage, hold capacity, speed, process-
2 ing equipment, and type and quantity of gear, in-
3 cluding an inventory of special equipment required
4 under section 302, with respect to each vessel.

5 “(2) The Secretary is authorized to charge a fee for
6 granting an authorization and issuing a permit under this
7 section. The level of fees charged under this paragraph
8 may not exceed the administrative cost incurred in grant-
9 ing an authorization and issuing a permit. Fees collected
10 under this paragraph shall be available to the Under Sec-
11 retary of Commerce for Oceans and Atmosphere for ex-
12 penses incurred in granting authorizations and issuing
13 permits under this section.

14 “(3) After the effective date of this section, no vessel
15 of the United States shall operate in the yellowfin tuna
16 fishery in the eastern tropical Pacific Ocean without a
17 valid permit issued under this section.

18 “(b) PERMIT SANCTIONS.—(1) In any case in
19 which—

20 “(A) a vessel for which a permit has been is-
21 sued under this section has been used in the com-
22 mission of an act prohibited under section 305;

23 “(B) the owner or operator of any such vessel
24 or any other person who has applied for or been is-

1 sued a permit under this section has acted in viola-
2 tion of section 305; or

3 “(C) any civil penalty or criminal fine imposed
4 on a vessel, owner or operator of a vessel, or other
5 person who has applied for or been issued a permit
6 under this section has not been paid or is overdue,
7 the Secretary may—

8 “(i) revoke any permit with respect to such
9 vessel, with or without prejudice to the issuance
10 of subsequent permits;

11 “(ii) suspend such permit for a period of
12 time considered by the Secretary to be appro-
13 priate;

14 “(iii) deny such permit; or

15 “(iv) impose additional conditions or re-
16 strictions on any permit issued to, or applied
17 for by, any such vessel or person under this sec-
18 tion.

19 “(2) In imposing a sanction under this subsection,
20 the Secretary shall take into account—

21 “(A) the nature, circumstances, extent, and
22 gravity of the prohibited acts for which the sanction
23 is imposed; and

1 “(B) with respect to the violator, the degree of
2 culpability, any history of prior offenses, and other
3 such matters as justice requires.

4 “(3) Transfer of ownership of a vessel, by sale or oth-
5 erwise, shall not extinguish any permit sanction that is
6 in effect or is pending at the time of transfer of ownership.
7 Before executing the transfer of ownership of a vessel, by
8 sale or otherwise, the owner shall disclose in writing to
9 the prospective transferee the existence of any permit
10 sanction that will be in effect or pending with respect to
11 the vessel at the time of transfer.

12 “(4) In the case of any permit that is suspended for
13 the failure to pay a civil penalty or criminal fine, the Sec-
14 retary shall reinstate the permit upon payment of the pen-
15 alty or fine and interest thereon at the prevailing rate.

16 “(5) No sanctions shall be imposed under this section
17 unless there has been a prior opportunity for a hearing
18 on the facts underlying the violation for which the sanction
19 is imposed, either in conjunction with a civil penalty pro-
20 ceeding under this title or otherwise.”.

21 (h) Section 307 (16 U.S.C. 1417) is hereby redesign-
22 nated as section 305, and amended—

23 (1) in subsection (a)—

24 (A) by amending paragraph (1) to read as
25 follows:

1 “(1) for any person to sell, purchase, offer for
2 sale, transport, or ship, in the United States, any
3 tuna or tuna product unless the tuna or tuna prod-
4 uct is either dolphin safe or has been harvested in
5 compliance with the International Dolphin Conserva-
6 tion Program by a country that is a member of the
7 Inter-American Tropical Tuna Commission or has
8 initiated steps, in accordance with Article V, para-
9 graph 3 of the Convention establishing the Inter-
10 American Tropical Tuna Commission, to become a
11 member of that organization;”;

12 (B) by striking paragraphs (2) and insert-
13 ing in lieu thereof the following:

14 “(2) except as provided for in subsection
15 101(d), for any person or vessel subject to the juris-
16 diction of the United States intentionally to set a
17 purse seine net on or to encircle any marine mam-
18 mal in the course of tuna fishing operations in the
19 eastern tropical Pacific Ocean except in accordance
20 with this title and regulations issued under pursuant
21 to this title;”;

22 (C) by amending paragraph (3) to read as
23 follows:

24 “(3) for any person to import any yellowfin
25 tuna or yellowfin tuna product or any other fish or

1 fish product in violation of a ban on importation im-
 2 posed under section 101(a)(2);”;

3 (2) in subsection (b)(2), by inserting “(a)(5)
 4 and” before “(a)(6)”; and
 5 (3) by deleting subsection (d).

6 (i) Section 308 (16 U.S.C. 1418) is redesignated as
 7 section 306, and amended by striking “303” and inserting
 8 in lieu thereof “302(d)”.

9 (j) CLERICAL AMENDMENTS.—The table of contents
 10 in the first section of the Marine Mammal Protection Act
 11 of 1972 is amended by striking the items relating to title
 12 III and inserting in lieu thereof the following:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

“Sec. 301. Findings and policy.

“Sec. 302. Authority of the Secretary.

“Sec. 303. Reports by the Secretary.

“Sec. 304. Permits.

“Sec. 305. Prohibitions.

“Sec. 306. Authorization of appropriations.”.

13 **SEC. 6. AMENDMENTS TO THE TUNA CONVENTIONS ACT.**

14 (a) Section 3(c) of the Tuna Conventions Act (16
 15 U.S.C. 952(c)) is amended to read as follows:

16 “(c) at least one shall be either the Director, or an
 17 appropriate regional director, of the National Marine
 18 Fisheries Service; and”.

19 (b) Section 4 of the Tuna Conventions Act (16 U.S.C.
 20 953) is amended to read as follows:

1 **“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC**
2 **ADVISORY SUBCOMMITTEE.**

3 “The Secretary, in consultation with the United
4 States Commissioners, shall—

5 “(1) appoint a General Advisory Committee
6 which shall be composed of not less than five nor
7 more than fifteen persons with balanced representa-
8 tion from the various groups participating in the
9 fisheries included under the conventions, and from
10 nongovernmental conservation organizations. The
11 General Advisory Committee shall be invited to have
12 representatives attend all nonexecutive meetings of
13 the United States sections and shall be given full op-
14 portunity to examine and to be heard on all pro-
15 posed programs of investigations, reports, rec-
16 ommendations, and regulations of the commission.
17 The General Advisory Committee may attend all
18 meetings of the international commissions to which
19 they are invited by such commissions;

20 “(2) appoint a Scientific Advisory Subcommit-
21 tee which shall be composed of not less than five nor
22 more than fifteen qualified scientists with balanced
23 representation from the public and private sectors,
24 including nongovernmental conservation organiza-
25 tions. The Scientific Advisory Subcommittee shall
26 advise the General Advisory Committee and the

1 Commissioners on matters including the conserva-
2 tion of ecosystems; the sustainable uses of living ma-
3 rine resources related to the tuna fishery in the east-
4 ern Pacific Ocean; and the long-term conservation
5 and management of stocks of living marine resources
6 in the eastern tropical Pacific Ocean. In addition,
7 the Scientific Advisory Subcommittee shall, as re-
8 quested by the General Advisory Committee, the
9 United States Commissioners or the Secretary, per-
10 form functions and provide assistance required by
11 formal agreements entered into by the United States
12 for this fishery, including the International Dolphin
13 Conservation Program. These functions may include:
14 (1) the review of data from the Program, including
15 data received from the Inter-American Tropical
16 Tuna Commission; (2) recommendations on research
17 needs, including ecosystems, fishing practices, and
18 gear technology research, including the development
19 and use of selective, environmentally safe and cost-
20 effective fishing gear, and on the coordination and
21 facilitation of such research; (3) recommendations
22 concerning scientific reviews and assessments re-
23 quired under the Program and engaging, as appro-
24 priate, in such reviews and assessments; (4) consult-
25 ing with other experts as needed; and (5) rec-

1 ommending measures to assure the regular and
 2 timely full exchange of data among the parties to
 3 the Program and each nation's National Scientific
 4 Advisory Committee (or equivalent);

5 “(3) establish procedures to provide for appro-
 6 priate public participation and public meetings and
 7 to provide for the confidentiality of confidential busi-
 8 ness data. The Scientific Advisory Subcommittee
 9 shall be invited to have representatives attend all
 10 nonexecutive meetings of the United States sections
 11 and the General Advisory Subcommittee and shall be
 12 given full opportunity to examine and to be heard on
 13 all proposed programs of scientific investigation, sci-
 14 entific reports, and scientific recommendations of
 15 the commission. Representatives of the Scientific
 16 Advisory Subcommittee may attend meetings of the
 17 Inter-American Tropical Tuna Commission in ac-
 18 cordance with the rules of such Commission; and

19 “(4) fix the terms of office of the members of
 20 the General Advisory Committee and Scientific Advi-
 21 sory Subcommittee, who shall receive no compensa-
 22 tion for their services as such members.”.

23 **SEC. 7. EFFECTIVE DATE.**

24 Sections 3 through 6 of this Act shall become effec-
 25 tive upon certification by the Secretary of State to Con-

1 gress that a binding resolution of the Inter-American
2 Tropical Tuna Commission or other legally binding instru-
3 ment establishing the International Dolphin Conservation
4 Program has been adopted and is in effect.

○

S 1420 IS——2